

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Casey Alan Johns,

Petitioner

v.

Perry Russell, et al.,

Respondents

Case No. 2:23-cv-00870-CDS-NJK

**Order Granting Motion for
Leave to File a Third-
Amended Petition**

[ECF No. 30]

Counseled Petitioner Casey Alan Johns moves for leave to file a third-amended habeas petition. ECF No. 30. Respondents opposed the motion, and Johns replied. ECF Nos. 32, 33. For the reasons discussed below, I grant the motion.

I. Background Information

Johns commenced this habeas action on June 2, 2023. ECF No. 1. I granted counsel for Johns, and counsel made an initial appearance on August 24, 2023. ECF Nos. 7, 10. On August 25, 2023, I issued a scheduling order, which gave Johns 90 days to file an amended habeas petition. ECF No. 11. Three days later, on August 28, 2023, Johns filed a first-amended petition and moved for leave to file a second-amended petition. ECF Nos. 12, 14. Johns stated in his motion that he filed the first-amended petition as a protective petition. ECF No. 14 at 3. I granted the request. ECF No. 17. On November 28, 2023, this case was stayed while Johns completed his state habeas proceedings. ECF No. 20. On December 27, 2024, this case was reopened, and Johns was given until February 28, 2025, to file his second-amended petition. ECF No. 24. Johns simultaneously filed his second-amended petition and his instant motion. ECF Nos. 25, 30.

II. Discussion

Johns requests leave to file a third-amended petition to provide him an opportunity to obtain an expert evaluation concerning mental health issues related to Ground 4(B). ECF No. 30 at 2. Johns explains that his counsel has already secured an expert to perform the evaluation; however, the evaluation could not take place before the filing of his second-amended petition, which was done out of necessity on January 23, 2025, due to the one-year statute of limitations. *Id.* at 2–4. Respondents oppose the motion, arguing that (1) Johns fails to comply with Local Rule 15-1(a), (2) Johns should wait to file his motion until after he has obtained the mental health evaluation, and (3) any new evidence developed during this investigation cannot be considered by this court. ECF No. 32.

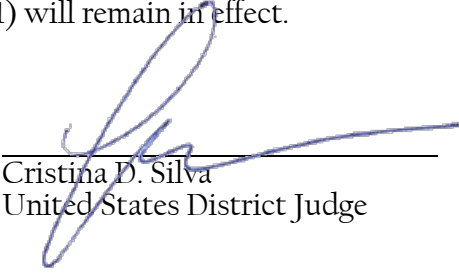
I find that good cause exists for Johns to file a third-amended petition. First, Local Rule 15-1(a) states that a proposed amended pleading must be submitted with the motion for leave to amend unless otherwise permitted by the court. It is the usual practice of this court to grant, in certain situations, motions to amend without the accompaniment of the amended pleading in habeas corpus proceedings. I find that this practice is appropriate here and waive the requirement of LR 15-1(a), given that Johns filed his second-amended petition to meet his statute of limitations deadline but needs further time to fully prepare his operative petition in this matter. Second, Johns' motion is not premature. If Johns were to wait until he receives his mental health evaluation to move for leave to file his third-amended petition, respondents would be placed in the inefficient position of having to respond to the second-amended petition only for it to be replaced by the third-amended petition. Third, although this court is cognizant that it is barred from considering new evidence in certain situations in federal habeas matters, it is premature for this court to make such an assessment. Finally, under Federal Rule of Civil Procedure 15(a)(2), “[t]he court should freely give leave [to amend] when justice so requires.”¹

¹ This Order does not, however, affect, in any manner, the operation of the statute of limitations in this case, and I do not mean in this Order to convey any opinion whatsoever about when the limitations period expires (or expired).

1 **III. Conclusion**

2 It is therefore ordered that Johns' motion for leave to file a third-amended petition [ECF
3 No. 30] is **granted**. Johns will have up to and including 90 days from the date of this order to file
4 his third-amended petition. In all other respects, the schedule for further proceedings set forth in
5 the order entered August 25, 2023 (ECF No. 11) will remain in effect.

6 Dated: February 14, 2025

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8 Cristina D. Silva
9 United States District Judge
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